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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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26135	7590	11/17/2005	EXAMINER	
LOTT & FRIEDLAND, P.A.			STRIMBU, GREGORY J	
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3634

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,186

Applicant(s)

JOHNSTON, THOMAS B.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13,15-17,19-26,28-34,37,38,40-42 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13,15-17,19-26,28-34,37,38,40-42 and 44-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

The drawing correction filed on January 12, 2005 and October 21, 2005 have been approved, however, the drawings are still objected to under 37 CFR 1.83(a). The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "2" and "25" have both been used to designate a Z-bar as shown in figure 2, 4 and 5. Additionally, the drawings must show every feature of the invention specified in the claims. Therefore, the means for holding the shutter against the opening comprising at least one L-angle bracket must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 1-6, 8-13, 15-17, 19-26, 28-34, 37, 38, 40-42, and 44-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “means for locking said louvers into a closed position” on line 7 of claim 1 render the claims indefinite because it is unclear what structure performs the function of locking the louvers. See paragraph 25, lines 13-15 which merely set forth that the L-angle can be used to lock the louvers in position, however, it is unclear how an L-angle, without more, can lock the louvers in position. Also, see paragraph 26 which sets forth that the L-angle can be used with any device that holds the operating mechanism in a fixed position, but fails to set forth any examples. Accordingly, it cannot be determined what structure performs the recited locking function. Also see recitations such as “means for holding said shutter against an external opening” on line 8 of claim 1 which suffers from the same problem since it is unclear how the L-angle and Z bar function to hold the shutter against the structure. Recitations such as “a structure” on line 12 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the structure set forth above or is attempting to set forth another structure in addition to the one set forth above. Recitations such as “said shutter protects said

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external opening" on line 16 of claim 1 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a shutter or the combination of a shutter and an external opening. The preamble of claim 1 and lines 8-9 imply the former while the positive recitation of the opening on line 16 of claim 1 implies the latter. Recitations such as "an operating mechanism" on line 2 of claim 2 render the claims indefinite because it is unclear if the operating mechanism comprises part of the means for locking or if it is in addition to the means for locking. Recitations such as "a horizontal axis" on line 3 of claim 2 render the claims indefinite because it is unclear how all of the louvers rotate about a single axis when it appears that the louvers rotate about a plurality of axes. Recitations such as "type" on line 12 of claim 38 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How much like a hook must a structure be before it can be referred to as a hook type structure? Recitations such as "a closed position" on line 15 of claim 38 render the claims indefinite because it is unclear if the applicant is referring to the closed position set forth above or is attempting to set forth another closed position in addition to the one set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 2, 4, 5, 8, 11, 17, 21, 22, 24, 25, 28, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveilbil in view of Arehart et al.

Zveilbil discloses a shutter providing protection from hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour comprising: an outer frame 10 formed by a pair of vertical members (not numbered, but shown in figure 1) and a pair of horizontal members (not numbered, but shown in figure 1) connected to each other and defining an interior area; a plurality of functional horizontal louvers 18 movably connected to said outer frame and substantially filling said interior area of said frame; wherein said pair of horizontal members includes an upper member and a lower member said upper horizontal member being connectable above said external opening in a structure by at least one hinge 12 wherein said shutter is movable about said at least one hinge and wherein said shutter is resistant to hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour and said shutter protects said external opening in said structure from being damaged from said hurricane force winds wherein said damage is caused by wind force or debris being carried by said hurricane force wind, an operating mechanism/locking means 32. Zveilbil is silent concerning a locking means and a holding means.

However, Arehart et al. discloses a means for holding a frame against a structure comprising holes and bolts 42. The frame having an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveilbil with a holding means and aluminum construction, as taught by Arehart et al., to enable a user to releaseably fix the shutter to the structure to prevent an intruder from pivoting

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open the louver assembly while improving the corrosion resistance of the shutter assembly.

Since Zveilbil, as modified above, discloses the structure of the applicant's invention, Zveilbil must perform the same as the applicant's invention, i.e., provide protection from hurricane force winds.

Claims 1, 2, 4, 5, 8, 12, 15, 21, 22, 24, 25, 28, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveilbil in view of Astrizky.

Zveilbil discloses a shutter providing protection from hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour comprising: an outer frame 10 formed by a pair of vertical members (not numbered, but shown in figure 1) and a pair of horizontal members (not numbered, but shown in figure 1) connected to each other and defining an interior area; a plurality of functional horizontal louvers 18 movably connected to said outer frame and substantially filling said interior area of said frame; wherein said pair of horizontal members includes an upper member and a lower member said upper horizontal member being connectable above said external opening in a structure by at least one hinge 12 wherein said shutter is movable about said at least one hinge and wherein said shutter is resistant to hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour and said shutter protects said external opening in said structure from being damaged from said hurricane force winds wherein said damage is caused by wind force or debris being carried by

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said hurricane force wind, an operating mechanism/locking means 32. Zveilbil is silent concerning a locking means and a holding means.

However, Astrizky discloses a means for holding a frame of a door 50 against a structure 10 comprising an L-angle bracket 24. Additionally, Astrizky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveilbil with a holding means and polycarbonate construction, as taught by Astrizky, to increase the support of the non-hinged end of the shutter during a hurricane and increase the durability of the shutter.

Since Zveilbil, as modified above, discloses the structure of the applicant's invention, Zveilbil must perform the same as the applicant's invention, i.e., provide protection from hurricane force winds.

Claims 1, 2, 4, 5, 8, 16, 21, 22, 24, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveilbil in view of Goldhaber.

Zveilbil discloses a shutter providing protection from hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour comprising: an outer frame 10 formed by a pair of vertical members (not numbered, but shown in figure 1) and a pair of horizontal members (not numbered, but shown in figure 1) connected to each other and defining an interior area; a plurality of functional horizontal louvers 18 movably connected to said outer frame and substantially filling said interior area of said frame; wherein said pair of horizontal members includes an upper member and a lower

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member said upper horizontal member being connectable above said external opening in a structure by at least one hinge 12 wherein said shutter is movable about said at least one hinge and wherein said shutter is resistant to hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour and said shutter protects said external opening in said structure from being damaged from said hurricane force winds wherein said damage is caused by wind force or debris being carried by said hurricane force wind, an operating mechanism/locking means 32. Zveibil is silent concerning a locking means and a holding means.

However, Goldhaber discloses a Z bar 16 for holding a closure 100 against an opening (not numbered, but seen in figure 5).

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a holding means, as taught by Goldhaber, to increase the support of the non-hinged end of the shutter during a hurricane.

Since Zveibil, as modified above, discloses the structure of the applicant's invention, Zveibil must perform the same as the applicant's invention, i.e., provide protection from hurricane force winds.

Claims 3, 9, 23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Astrizky, as applied to claims 1, 2, 4, 5, 8, 12, 15, 21, 22, 24, 25, 28, and 33 above and further in view of Lane. Lane discloses an L angle bracket operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Claims 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Astrizky as applied to claims 1, 2, 4, 5, 8, 12, 15, 21, 22, 24, 25, 28, and 33 above, and further in view of Vaida. Vaida discloses a winding crank operating mechanism 46.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a winding crank operating mechanism, as taught by Vaida, to increase the ease with which the louvers can be moved.

Claims 10, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Astrizky as applied to claims 1, 2, 4, 5, 8, 12, 15, 21, 22, 24, 25, 28, and 33 above, and further in view of Yadidya. Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with louvers, as taught by Yadidya, to prevent air from passing through the shutter when the louvers are closed.

Claims 13 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Arehart et al. as applied to claims 1, 2, 4, 5, 8, 11, 17, 21, 22, 24,

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25, 28, and 32 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claims 19, 20 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Astrizky as applied to claims 1, 2, 4, 5, 8, 12, 15, 21, 22, 24, 25, 28, and 33 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya. Zveibil discloses a hurricane shutter comprising an outer frame 10 forming an interior area, a plurality of louvers 18 extending horizontally across said interior area, an upper horizontal member (not numbered, but shown in figure 1) and a lower horizontal member (not numbered, but shown in figure 1), said upper horizontal member being connectable above an external opening in a structure by at least one hinge 12 wherein said shutter is movable about said at least one hinge; at least one operator 32 movably connected to said louvers such that said operator lies

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perpendicular to said louvers, wherein said operator functions to actuate said louvers, lock said louvers in a closed position and hold said shutter against a window, and wherein said louvers each contain a hook-type structure 40 on each horizontal each edge of said louver and wherein said hooks face in opposite directions on each louver and wherein said shutter is resistant to hurricane force winds of approximately 75 miles per hour to approximately 225 miles per hour and said shutter protects said window from being damaged from said hurricane force winds wherein said damage is caused by wind force or debris being carried by said hurricane force wind. Zveibil is silent concerning an L-angle bracket and interlocking louvers.

However, Lane discloses an L angle bracket operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Additionally, Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with louvers, as taught by Yadidya, to prevent air from passing through the shutter when the louvers are closed.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Arehart et al. Arehart et al. discloses an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with an aluminum construction, as taught by Arehart et al., to improve the corrosion resistance of the shutter.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Atrisky. Atrisky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a polycarbonate construction, as taught by Atrisky, to increase the durability of the shutter.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

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It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Man. Man discloses a shutter comprising a fiberglass construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a fiberglass construction, as taught by Man, to reduce the weight of the shutter while maintaining strength. See column 1, lines 35-39.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane and Yadidya as applied to claim 38 above, and further in view of Edwards. Edwards discloses a shutter comprising steel louvers. See column 1, lines 19-20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with steel louvers, as taught by Edwards, to reduce the cost of manufacturing the shutter.

Response to Arguments

Applicant's arguments filed October 21, 2005 have been fully considered but they are for the most part moot in view of the new grounds of rejection. However, some of

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the applicant's comments concerning Zveilbil are pertinent to the current rejection and have therefore been addressed below.

With respect to the applicant's comments concerning Zveilbil, the examiner respectfully disagrees. Although Zveilbil does not specifically mention the ability to withstand hurricane force winds, Zveilbil, as modified, teaches the same structure as that claimed by the applicant. Therefore, one with ordinary skill in the art would have to assume that the modified structure of Zveilbil would be capable of functioning as claimed by the applicant. If the modified structure of Zveilbil and the applicant's claimed structure are the same, what is it that makes the applicant's claimed structure capable of withstanding hurricane force winds while the modified structure of Zveilbil cannot withstand hurricane force winds. It is suggested that the applicant amend the claims to specifically recite the structure that makes applicant's shutter capable of withstanding hurricane force winds. Applicant's current position is analogous to claiming the structure of a Yugo®, but claiming that the applicant's Yugo® can go 1000 miles per hour.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-

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272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
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November 10, 2005